

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.398 of 2011

V.Velu,
S/o.Vedappan,
T.Ammapettai Harur Taluk,
Dharmapur District-639 906. Appellant/Complainant

/versus/

Chennakrishnan,
S/o.Venkataraman,
T.Ammapettai, Harur Taluk,
Dharmapuri District-639 906. Respondent/Accused

Prayer:- Criminal Appeal is filed under Section 378 of Cr.P.C, against to set aside the judgment of acquittal dated 22.03.2011 passed in C.A.No.230 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, reversing the judgment of conviction dated 20.10.2010 passed in C.C.No.550 of 2007 on the file of the Judicial Magistrate No.VIII, Coimbatore.

For Appellant : Mr.B.R.Shankaralingam

For Respondent : No appearance

J U D G M E N T

Heard the Learned Counsel for the appellant. Though notice was served to the respondent and he has entered appearance through Counsel, there is no representation on behalf of the respondent.

2. This Criminal Appeal is filed against the reversing judgment of the Lower Appellate Court in the matter arising under Section 138 of Negotiable Instrument Act. The case of the complainant/appellant is that the respondent and his father had financial transaction with him. They borrowed a sum of Rs.2,00,000/- on 05.05.2004 and executed a pro-note to discharge the debt. A cheque was issued by the accused on 02.07.2004, drawn at Indian Bank, Singarapettai Branch, in favour of the complainant. When the cheque was presented for collection in

the same branch, in which the appellant also had account. The cheque was returned with endorsement "Fund Insufficient". On receipt of the intimation, for return of cheque dated 13.08.2004, the appellant has issued statutory notice through counsel at Coimbatore. The said notice dated 04.09.2004 was sent by RPAD on the same day, but returned un-served with postal endorsement "the addressee not in town for 7 continuous days". Hence returned. Thereafter, the complaint has been presented before the Judicial Magistrate, Coimbatore, which was taken on file and summons was issued to the accused/respondent and the case was contested.

3. To prove the complaint, the appellant/complainant has examined himself as PW.1. Marked 5 Exhibits namely the pro-note executed by the accused dated 05.05.2004 as Ex.P.1, the cheque issued by the accused on 02.07.2004 as Ex.P.2, Bank Intimation Memo as Ex.P.3, Statutory Notice dated 04.09.2004 as Ex.P.4, Returned Postal Cover as Ex.P.5.

4. After considering the evidence, the trial Court has held that the subject cheque Ex.P.2 dated 02.07.2004, was issued to discharge legally enforceable debt. The complainant having proved the issuance of cheque by the accused and the return of cheque for want of fund, the accused is guilty of offence under Section 138 of Negotiable Instrument Act. Therefore, sentenced the accused to undergo 1 year S.I and to pay a fine of Rs.5,000/-, in default 3 months S.I.

5. Aggrieved by the conviction and sentence, the accused has preferred the appeal before the Additional District and Session Judge, Coimbatore in C.A.No.230 of 2010.

6. In the appeal, the accused has contended that the trial Court has no territorial Jurisdiction to entertain the private complaint under Section 138 of Negotiable Instrument Act. The evidence admitted by the trial Court are inadmissible. The mandatory provisions contemplated under the Negotiable Instrument Act is not been followed.

7. On considering the grounds of appeal and re-appreciation of the evidence, the Lower Appellate court has held that when the parties reside outside the jurisdiction of Coimbatore Judicial Magistrate and cheque being presented outside the territorial jurisdiction of the Judicial Magistrate Court, Coimbatore, just because the statutory notice was served from the Advocate Office at Coimbatore, the Magistrate Court at Coimbatore cannot have a jurisdiction.

8. Referring the judgment of the Hon'ble Supreme Court in M/s.Harman Electronics (P) Ltd & Anr. Vs. M/s.National Panasonic India Ltd., the lower Appellate Court has held that the

Coimbatore Court has no territorial jurisdiction, when no cause of action falls within its jurisdiction. The issuance of notice from the Office of the Advocate at Coimbatore, does not confer cause of action.

9. Further, the Lower Appellate Court has perused the cheque Ex.P.2 and has found that the bank seal is not affixed on it. Therefore, it doubted very presentation of the cheque for collection. The cheque Ex.P.2 which is devoid of bank seal has given suspicion about its presentation in the mind of the Lower Appellate Court. The failure of not examining witness from the bank has also taken as a reason for allowing the appeal and dismissing the complaint.

10. Aggrieved by the above said judgment, the complainant is before this Court.

11. The learned counsel appearing for the appellant would submit that after the judgment of the Hon'ble Supreme Court in K.Baskaran Case, which has conferred five places of jurisdiction, which includes the place where the statutory notice issued. Therefore the complaint filed from the place of statutory notice issued is well within the territorial jurisdiction of Judicial Magistrate, Coimbatore. He would submit that the judgment of M/s.Harman Electronics Case., which came subsequently and restricted the jurisdiction, holding that issuance of notice does not confer cause of action, if the receipt of notice completes the action to give cause of action. This judgment have only prospective effect and not a retrospective effect. Further, the learned counsel would submit that if at all, the lower Appellate Court had thought that the Judicial Magistrate Court at Coimbatore had no territorial jurisdiction, it should not have allowed the appeal and dismissed the complaint, but should have transferred it to the appropriate jurisdiction Court.

12. Further, the learned counsel for the appellant would submit that since the cheque was presented in the same bank, where the complainant had account, the question of affixing seal on the instrument, did not arise. The Bank Memo which is marked as Ex.P.3, indicates the cheque number and cause for return. The bank Official has also affixed the initial in the memo. While so, non-examination of staff, from the bank is not fatal to the case of the complainant.

13. Heard the learned counsel for the appellant and perused the records.

14. As far as the territorial jurisdiction is concerned, after the judgment of the Hon'ble Supreme Court rendered in K.Baskaran Vs.Sankaran Vaidyyan Balan on 29.09.1999 reported in

AIR 1999 SCC 3782, the jurisdiction to file a private complaint under Section 138 of Negotiable Instrument Act got expanded, after giving liberal interpretation to Section 138 of Negotiable Instrument Act.

"The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

"Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas." Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

15. Till M/s.Harman Electronics judgment on 12.12.2008, the law which was holding the field was the pronouncement of the Supreme Court in Baskaran's case, which gave the option to the complainant to prefer the complaint in any one of the five places mentioned. The place of issuance of statutory notice was one among them. In fact, as a march of law, more liberal views were taken by the Hon'ble Supreme Court in the subsequent

judgments. Later, it was realised, liberal view has caused inconvenience both for the complainant as well as the accused, leading to filing the complaint across the State in the Country. So, in M/s.Harman Electronics Case, wherein, the Hon'ble Supreme Court felt that the territorial jurisdiction of filing the complaint under Section 138 of Negotiable Instrument Act cannot be so wide.

16. Hence held that, while issuance of a notice by the holder of a negotiable instrument is necessary, service thereof is also imperative. Only on a service of such notice and failure on the part of the accused to pay the demanded amount within a period of 15 days thereafter, commission of an offence completes. Giving of notice, therefore, cannot have any precedent over the service. It is only from that view of the matter in Dalmia Cement (Bharat) Ltd.v.Galaxy Traders & Agencies Ltd., [(2001) 6 SCC 463] emphasis has been laid on service of notice.

25. We cannot, as things stand today, be oblivious of the fact that a banking institution holding several cheques signed by the same borrower cannot only present the cheque for its encashment at four different places but also may serve notices from four different places so as to enable it to file four complaint cases at four different places. This only causes grave harassment to the accused. It is, therefore, necessary in a case of this nature to strike a balance between the right of the complainant and the right of an accused vis-à-vis the provisions of the Code of Criminal Procedure." It is a different story that this issue did not get rest, till the recent amendment in the Act.

17. As far as the 1st ground is concerned, on the day of filing the complaint, the Magistrate Court at Coimbatore had jurisdiction in the light of Bhaskaran's judgment. The trial Court has also entertained it. The accused has contested the matter and the case has reached the logical end. While so, the Lower Appellate Court, ought not to have allowed the appeal on this ground, for the reason stated above.

18. The complaint under Negotiable Instrument Act is presented under Section 200 of Cr.P.C before the Magistrate. The Magistrate takes the complaint on file, on the power conferred under Section 190 (1)(a) of Cr.P.C which reads as below:

Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section

(2), may take cognizance of any offence

(a) upon receiving a complaint of facts which constitute such offence;

19. Section 460 (e) of Cr.P.C read with 462 of Cr.P.C would clearly say that, if any Magistrate not empowered by law to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190; erroneously in good faith take cognizance, it shall not be set aside merely on the ground of his not being so empowered. Such an irregularity will not vitiate the proceedings. The Appellate Courts cannot set aside finding sentence or order of the Magistrate merely on the ground that the proceedings has been took place in a wrong sessions division, district, sub-division or other local areas, unless it appears that such error has in fact occasioned a failure of justice.

20. In this Case, the cognizance taken by the Magistrate is based on the law of the land, at that point of time. There is no failure of justice occasioned in this case. In such circumstances, the lower Appellate Court ought not to have allowed the appeal on this ground.

21. As far as the 2nd ground is concerned, the absence of bank seal in the cheque would have been a point for consideration, if the complainant has not filed the Bank Intimation Memo Ex.P.3. In fact, this Court on perusal of the records would find that before the trial Court objection has been taken by the complainant and he has filed an application under Section 91 Cr.P.C., seeking the Bank Memo dated 13.08.2004 and the challan along with Income Tax Statement of the complainant for the year 2005-2006. The trial Court having gone through the records and the exhibits marked by the complainant more particularly, Ex.P.3-Bank Intimation Memo, which was not disputed by the accused has held that the accused has not disputed the factum of presenting the cheque, when the complainant was subjected to cross examination. The trial Court has held that the application under Section 91 Cr.P.C is irrelevant and devoid of merits. The trial Court dismissed the application filed by the accused on 03.09.2010. The accused has not preferred any revision or appeal against that.

22. Having accepted the order of the trial Court, the plea has been re-agitated before the Lower Appellate Court and the Lower Appellate Court, unfortunately, without proper appreciation of the cheque Ex.P.1 along with the return memo Ex.P.3 has erroneously held that absence of seal in Ex.P.2 cause doubt about the presentation.

23. In this connection, it is essential to read Section 138 of Negotiable Instrument Act, which gives right to the payee or holder in due course of a cheque to launch criminal prosecution. If the cheque is returned, unpaid for want of fund, it is not mere issuance of cheque and bouncing of the cheque for want of fund gives cause of action. Only when the statutory notice sent within 15 days, received and not responded gives the cause of action. In this case, the Lower Appellate Court has doubted both the cause of action to file a complaint and the territorial jurisdiction of the Court to entertain the complaint. Neither of the ground is available to the complainant. When the cheque given by him presumably presented and returned unpaid and same been intimated to him through notice dated 04.09.2004, the accused has not claimed the notice. In the course of the trial, he has not denied the execution of the cheque. While so, the statutory presumption against him under Section 139 of Negotiable Instrument Act, strongly falls on him. The trial Court, after proper appreciation of the material placed before it has rightly held the accused guilty. The Lower Appellate Court has gone tangentially and allowed the appeal on the ground, which is perverse and illusory. Therefore, the order of the Lower Appellate Court is bound to be set aside.

24. Accordingly, the Criminal Appeal is Allowed. The judgement of the Lower Appellate Court is set aside and the order of the trial Court passed in C.C.No.550 of 2007 dated 20.10.2010 is restored.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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bsm

To,

1. The Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore.
 2. The Judicial Magistrate No.VIII, Coimbatore.
 3. The Section Officer, Criminal Section, High Court, Madras.
- +1 CC to Mr.B.R.Shankaralingam, Advocate sr 27579.

Criminal Appeal No.398 of 2011

NRL (CO)
SP (09/05/2019)